

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: 4/20/05 - KW

Division: County Attorney

Bulk Item: Yes X No     

Staff Contact Person: Suzanne Hutton

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**AGENDA ITEM WORDING:**

Approval of a new Grant of Conservation Easement for Old Mariner's Hospital and rescission of the Grant of Conservation Easement approved by the BOCC on February 23, 2005.

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**ITEM BACKGROUND:**

Due to issues of uniformity and to provide Islamorada with the assurances all of its conservation easements normally provide, Islamorada subsequently requested modifications to the Grant of Conservation Easement approved 2/23/05.

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**PREVIOUS RELEVANT BOCC ACTION:**

In an effort to provide Islamorada with the required Conservation Easement on a parcel containing several hardwood hammocks in order to obtain a Certificate of Occupancy, the BOCC approved a Grant of Conservation Easement on February 23, 2005.

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**CONTRACT/AGREEMENT CHANGES: N/A**

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**STAFF RECOMMENDATIONS: Approval.**

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**TOTAL COST:** N/A

**BUDGETED:** Yes      No     

**COST TO COUNTY:** N/A

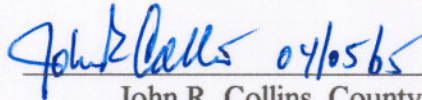
**SOURCE OF FUNDS:** N/A

**REVENUE PRODUCING:** Yes      No X

**AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty AK OMB/Purchasing      Risk Management     

**DIVISION DIRECTOR APPROVAL:**

 04/05/05

John R. Collins, County Attorney

**DOCUMENTATION:** Included X Not Required     

**DISPOSITION:**     

**AGENDA ITEM #**



This instrument prepared by:

Lillian Arango de la Hoz, Esq.  
Weiss Serota Helfman  
Pastoriza Guedes Cole & Boniske, P.A.  
2665 South Bayshore Drive, Suite 420  
Miami, FL 33133

After recording return to:

Islamorada, Village of Islands  
87000 Overseas Highway  
Islamorada, FL 33036

Real Estate No. 00419430-000000

### **GRANT OF CONSERVATION EASEMENT**

**THIS GRANT OF CONSERVATION EASEMENT** (this "Easement") is given this 20th day of April, 2005, by Board of County Commissioners of Monroe County, Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (the "Grantor"), to the **ISLAMORADA, VILLAGE OF ISLANDS, Florida municipal corporation**, whose address is 87000 Overseas Highway, Islamorada, FL 33036 (the "Grantee"). As used herein, the term Grantor shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined) and the term Grantee shall include any successor or assignee of Grantee.

### **WITNESSETH:**

**WHEREAS**, the Grantor is the owner of certain real property situated in Monroe County, Florida, and commonly known as or referred to as the Old Mariner's Hospital or Roth Building, located at 50 High Point Road, Plantation Key, Florida (RE# 00419430-000000), and more specifically described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, the Grantor desires to redevelop the Property for use as Monroe County Sheriff's offices and/or Sheriff's Station, and obtain a permit from the Grantee for this purpose (the "Permit"); and

**WHEREAS**, the Property contains High Quality Tropical Hardwood Hammock which requires long term protection and management and retention in its natural condition.

**WHEREAS**, the Grantee is authorized and required to regulate and control the use of the Property through its Land Development Regulations in order to protect the public health, safety and welfare. Section 7.3.6 of the Grantee's Land Development Regulations requires that certain areas of the Property be retained as open space and preserved in their natural condition to ensure long term



protection and management if the Property is to be redeveloped for the use contemplated pursuant to the Permit.

**WHEREAS**, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual conservation easement as defined in Section 704.06, Florida Statutes, over portions of the Property.

**NOW, THEREFORE**, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

1. **Grant of Easement.**

Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor and all subsequent owners of the Property, and shall remain in full force and effect forever. This Easement shall create and require the preservation of the open space created hereunder in its nature condition, and shall protect and preserve the natural, scenic, and open space values of the Property.

It is the purpose of this conservation easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Any wetland and/or upland areas included in this Easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

2. **Location of the Easement.**

The location and description of this Easement is described in the survey attached hereto and made a part hereof as Exhibit "B" (the "Easement Property").

3. **Rights Conveyed to the Grantee.**

To carry out the purpose of this Easement, the following rights are conveyed to Grantee:

a. To enter upon the Property at all reasonable times with any necessary equipment or vehicles to enforce the rights herein granted and to assure compliance in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and



b. To enforce by injunction or proceeding in equity or at law any activity on or use of the Property that is inconsistent with this Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

4. **Restraints and Prohibitions Imposed by this Easement.**

Except for restoration, creation, enhancement, maintenance and monitoring activities which are permitted or required by the Permit, if any, the following activities are prohibited in or on the Easement Property:

a. The future development or any other activity that alters the natural character of the required open space by this Easement.

b. The construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

c. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

d. Removal, trimming, pruning, or destruction of trees, shrubs, or other vegetation (except non-native or nuisance vegetation whose removal is specifically authorized in writing by the Grantee). Notwithstanding the foregoing, at the request of the Grantor, minor alterations or removal of native and other vegetation may be permitted or authorized by the Grantee in writing, in the event that the Grantee determines that the vegetation poses a health or safety concern, including concerns posed by natural disasters or unusual circumstances, such as hurricanes or floods.

e. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

f. Surface use except for purposes that permit the land or water area to remain predominately in its natural condition.

g. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing.

h. Acts or uses detrimental to such retention of land or water areas.

i. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical architectural, archaeological, cultural, or natural significance.



5. **Rights of the Grantor.**

Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any of the Grantee's rules, regulations, criteria, Permit and the intent and purposes of this Easement. No right of access by the general public to any portion of the Property is conveyed by this Easement.

6. **Costs Pertaining to this Easement.**

Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Easement Property. The ownership or enforcement of its rights under this Easement shall not subject the Grantee to any liability for any damage or injury that may be suffered by any person on the Easement Property or as a result of the condition of the Easement Property. Grantor shall pay any and all real property taxes and assessments levied by competent authorities on the Easement Property.

7. **Enforcement.**

Enforcement of the terms, provisions and restrictions of this Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions and restrictions of this Easement shall be recoverable by the prevailing party in such proceedings.

8. **Assignment.**

This Easement shall be assignable by Grantee to other governmental bodies or agencies, charitable organizations, or trusts, authorized or qualified to hold this Easement under applicable state laws whose purposes include protecting natural, scenic, or open space values of real property.

9. **Entire Agreement.**

This Easement constitutes the entire agreement between the parties and any prior understanding or representation of any time preceding the date of this Easement is not binding upon either party, except to the extent incorporated in this Easement.

10. **Modification.**

This Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the Public Records of Monroe County, Florida.



11. **Recordation.**

This Easement, and any amendment, alteration or release thereof, shall be recorded in the Public Records of Monroe County, Florida. The Grantor, at its sole cost and expense, shall record this Easement in the Public Records of Monroe County, Florida, as a precondition to the issuance of the Permit by the Grantee.

12. **Governing Law.**

This Easement and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida.

13. **Invalidity.**

If any provision of this Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby, as long as the purpose of this Easement is preserved.

14. **Notices.**

All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest to the respective address of each party as set forth in the beginning of this Easement.

15. **Effective Date.**

This Easement shall become effective upon its recordation in the Public Records of Monroe County, Florida.

16. **Paragraph Headings.**

Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Easement or in anyway defined, limited or described the scope and intent of the particular paragraph to which they refer.

17. **Notice Upon Sale or Divesture.**

Grantor shall insert the terms and restrictions of this Easement in any subsequent deed or other legal instrument by which Grantor sells, conveys, leases or divests itself of any interest in the Property.



**TO HAVE AND TO HOLD** unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Easement and that any and all mortgages have been joined or subordinated to this Easement; that Grantor has good right and lawful authority to convey this Easement; and that it hereby fully warrants and defends the title to this Easement hereby conveyed against the lawful claims of all persons whomsoever.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Easement on the respective dates under each signature: Islamorada, Village of Islands by and through its Mayor, authorized to execute same by its Council action on the \_\_\_\_\_ of \_\_\_\_\_, 2005.

(SEAL)

**ATTEST:**

Danny L. Kolhage, CLERK

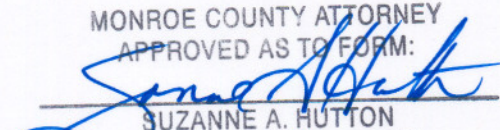
**GRANTOR:**

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor Dixie M. Spehar

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
SUZANNE A. HUTTON  
ASSISTANT COUNTY ATTORNEY  
Date 4/5/05



**GRANTEE:**

**ISLAMORADA, VILLAGE OF ISLANDS,  
a Florida municipal corporation**

By: \_\_\_\_\_  
**Robert Johnson, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Beverly Raddatz, Village Clerk**

**Approved as to form and legal  
sufficiency:**

\_\_\_\_\_  
**Village Attorney**

STATE OF FLORIDA       )  
                                      SS:  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by **ROBERT JOHNSON, as Mayor of ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation**, on behalf of the Corporation, who (check one) [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**



LEGAL DESCRIPTION: Mariners Hospital

PARCEL A

Lots 1 through 12, and SYLVAN CIRCLE HIGH POINT, according to the Plat thereof, as recorded in Plat Book 4, Page 96 of the Public Records of Monroe County, Florida, more fully described as follows:

A portion of High Point, according to the Plat thereof as recorded in Plat Book 4, Page 96 among the Public Records of Monroe County, Florida, more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Block 1 on the North side of High Point Road, according to said Plat of High Point and run North on the East line of said Block 1, a distance of 265.26 feet; thence run South along the dividing line between Lots 6,7,8 and Lots 9,10, and 11 of said Block 1, a distance of 275.86 feet to the North side of High Point Road as shown on said Plat of High Point; thence East on the said North line of High Point Road a distance of 280.44 feet to the Point of Beginning.

NOTE: The above description is ambiguous in that it starts by describing Lots 1 through 12, Block 1 of High Point subdivision and then proceeds to more fully describe these lots by metes and bounds.

Note: Written by Hal Thomas, agreed to by F.h. Hildebrandt

The ambiguity is in the fact that the metes and bounds description encompasses only Lots 1 through 8 inclusive, Block 1. This survey has encompassed Lots 1 through 12, Block 1 along with "Sylvan Circle", however ownership of Lots 9 through 12, Block 1 is subject to opinion of title.

PARCEL B

A portion of "Randal Adam's Subdivision" as recorded in Plat Book 1 at Page 110 of the Public Records of Monroe County, Florida, being more particularly described as follows:

Commencing at the most Northerly and most Easterly corner of Block 1 of "High Point" as recorded in Plat Book 4 at Page 96 of the Public Records of Monroe County, Florida, said point being coincident with the most Southerly and most Easterly corner of Tract C of "Lysiloma" as recorded in Plat Book 5 at Page 115 of the Public Records of Monroe County, Florida, run Southerly along the most Easterly line of the said Block 1 of "High Point" for 20.00 feet to the Point of Beginning of the herein described parcel; thence continue Southerly along the said Easterly line for 220.14 feet; thence deflect 139 degrees 46'20" left and run Northeasterly for 32.50 feet to a point 21.00 feet Easterly of (as measured on a perpendicular) the said Easterly line of Block 1; thence deflect 40 degrees 13'40" left and run Northerly along a line parallel to the said Easterly line of Block 1 for 195.38 feet thence deflect 90 degrees 08'37" left run Westerly for 21.00 feet to the Point of Beginning, subject however, to an easement in favor of the Grantor herein for any part of the legal description of recreation lands and facilities for Plantation Villas, a condominium, which is recorded in Official Record Book 618, at page 348 of the Public Records of Monroe County, Florida, which may encroach on the Southerly part of the above parcel.

PARCEL C

A portion of Lot 9 of "Randal Adam's Subdivision" as recorded in Plat Book 1 at Page 110 of the Public Records of Monroe County, Florida, being more particularly described as follows:

Commencing at the most Northerly and most Easterly corner of Block 1 of "High Point" as recorded in Plat Book 4 at Page 96 of the Public Records of Monroe County, Florida, said point being coincident with the most Southerly and most Easterly corner of "Lysiloma" as recorded in Plat Book 5 at Page 115 of the Public Records of Monroe County, Florida, run Southerly along the most Easterly line of the said Block 1 of "High Point" for 20 feet; thence deflect 90 degrees 08'37" left and run Easterly for 45.05 feet; thence deflect left and run North 2 degrees 34'14" East for 250.00 feet; thence North 87 degrees 25'46" West for 45 feet to the Easterly line of Tract C of "Lysiloma" as recorded in Plat Book 5 at Page 115 of the Public Records of Monroe County, Florida; thence South 2 degrees 34'14" West along the East line of the aforesaid Tract C of "Lysiloma" and the East line of the aforesaid Block 1 of "High Point" for 250.02 feet, more or less, to the Point of Beginning.



PARCEL D

A PORTION OF Lot 9 of "Randal Adam's Subdivision" as recorded in Plat Book 1 at Page 110 of the Public Records of Monroe County, Florida, being more particularly described as follows:

Commencing at the most Northerly and most Easterly corner of Block 1 of "High Point" as recorded in Plat Book 4 at Page 96 of the Public Records of Monroe County, Florida, said point being coincident with the most Southerly and most Easterly corner of "Lysiloma" as recorded in Plat Book 5 at Page 115 of the Public Records of Monroe County, Florida, run Southerly along the Easterly line of said Block 1 of High Point for 20 feet; thence deflect 90 degrees 08'37" left and run Easterly 45.05 feet to a Point of Beginning (P.O.B.); thence deflect left and run North 2 degrees 34'14" East for 250.02 feet; thence South 67 degrees 25'46" East for 15 feet; thence South 2 degrees 34'14" West along the East line of Parcel "C" for 250.02 feet; thence North 67 degrees 25'46" West for 15 feet to the Point of Beginning.



**EXHIBIT "B"**

**LEGAL DESCRIPTION AND SURVEY OF EASEMENT PROPERTY**



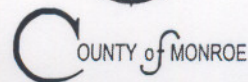
**‘Exhibit B’**  
**Part 1**

Conservation easement consisting of two areas labeled ‘Location A’ and ‘Location B’ respectively located upon the site.

‘Location A’: A portion of lots 9,10,11 and 12 of “High Point” according to the plat thereof, as recorded in Plat Book 4, Page 96 of the Public Records of Monroe County on February 10, 1959. Beginning at the most Northerly and Westerly corner of lot #12 running E.  $00^{\circ}00'00''$  118.37' to a point; thence run S.  $00^{\circ}00'00''$  275.86' to a point on the Northerly right-of-way line of High Point Road; thence run W.  $00^{\circ}00'00''$  73.37' along said line of right-of-way to a point of curvature of a circular curve concave to the Northeast having a radius of 25.00'; thence Northwesterly 39.27' along the arc of said curve through a central angle of  $90^{\circ}00'00''$ ; thence run N.  $00^{\circ}00'00''$  125.86' along the Easterly right-of-way line of Rolling Hill Road to a point of curvature of a circular curve concave to the Southwest having a radius of 25.00'; thence Northwesterly 34.24' along the arc of said curve through a central angle of  $78^{\circ}27'47''$  to a radial line of said curve which bears N.  $00^{\circ}00'00''$ ; thence on the prolongation of said radial 100.51' to the Point of Beginning. Parcel contains 29,135 s.f. or 0.67 acres more or less.

‘Location B’: A portion of Lot 9 of “Randal Adam’s Subdivision” as recorded in Plat Book 1 Page 110 of the Public Records of Monroe County, Florida being more particularly described as follows: Beginning at a point 170.32' N.  $01^{\circ}00'00''$  E. of the most Northerly and Easterly corner of Block 1 of High Point Subdivision as recorded in Plat Book 4, Page 96 of the Public Records of Monroe County on February 10, 1959. Said point being coincident with the most Southerly and most Easterly corner of “Lysiloma” as recorded in Plat Book 5 at page 115 of the Public Records of Monroe County, Florida and proceeding N.  $01^{\circ}00'00''$  E. 60.00' to a point; thence run S.  $89^{\circ}00'00''$  E. 60.00' to a point; thence run S.  $01^{\circ}00'00''$  W. 60.00' to a point; thence run N.  $89^{\circ}00'00''$  W. 60.00' to the Point of Beginning. Parcel contains 3,684 s.f. or 0.09 acres more or less.







'EXHIBIT B'  
(PART 2)

COMBINED AREA OF 'LOCATION A'  
(29,135 SF) AND 'LOCATION B'  
(3,684 SF) TOTALS 32,819 SF  
FOR CONSERVATION EASEMENT.

POINT OF BEGINNING  
'LOCATION B'

IRON PIPE

S.89°00'00"E 60.00'

45.00'

15'

3,684 sf  
TOTAL AREA  
'LOCATION B'

'LOCATION B'

S.01°00'00"W 60.00'

N.89°00'00"W 60.00'

N.01°00'00"E 60.00'

N.01°00'00"E 170.32'

"C"

PARCEL  
Treatment  
Plant

"D"

PARCEL

MOST NORTHERLY &  
EASTERLY CORNER OF  
BLOCK 1 OF HIGHPOINT  
SUBDIVISION, P.B. 4, PG.  
96

425.23' p.)

chain link fence

1 Sty. Metal  
Building  
F.F.L. 9.18

1 Sty. Metal  
Building  
F.F.L. 9.26

1 Sty. Metal  
Building  
F.F.L. 7.07

edge of asphalt

N.89°00'00"W.  
39.00' m. & d.

195.38' m. & d.

"B"

DATE:  
11/15/04

SCALE:  
1"=30'-0"

PROJECT:

'EXHIBIT B' (PART 2)

CONSERVATION EASEMENT

VILLAGE OF ISLAMORADA

SHEET NO.  
2  
OF 02

